

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

Tracey Baum,	:	Civil Action No.: 2:18-cv-00777-LPL
	:	
Plaintiff,	:	
v.	:	
ADT LLC d/b/a ADT Security Systems and	:	
Defenders, Inc.,	:	SECOND AMENDED COMPLAINT
	:	
Defendants.	:	
	:	

For this Second Amended Complaint, the Plaintiff, Tracey Baum, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1331, in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Tracey Baum ("Plaintiff"), is an adult individual residing in Sharon, Pennsylvania, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

4. The Defendant, ADT LLC d/b/a ADT Security Systems ("ADT"), is a New York business entity with an address of 229 West 28th Street, New York, New York 10001, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

5. The Defendant, Defenders, Inc. ("Defenders" and together with ADT collectively referred to as "Defendants"), is an Indiana business entity with an address of 3750 Priority Way

South Drive, Indianapolis, Indiana 46240, and is a “person” as the term is defined by 47 U.S.C. § 153(39).

FACTS

6. In or around June 2017, Defendants began calling Plaintiff's cellular telephone, number 330-xxx-3016.
7. The calls were placed from telephone number 800-522-2455.
8. When Plaintiff answered the calls from Defendants, she heard a prerecorded message requesting a call back regarding some important information.
9. Plaintiff does not have an account with either Defendant.
10. Plaintiff has no pre-existing business relationship with either Defendant and never requested by an agreement or otherwise that she be contacted.
11. Plaintiff never provided her cellular telephone number to Defendants and never provided her consent to Defendants to be contacted on her cellular telephone.
12. Defendants' calls directly interfered with Plaintiff's right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff a significant amount of anxiety, frustration and annoyance.

COUNT I

VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, ET SEQ.

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
14. At all times mentioned herein and within the last four years, Defendants called Plaintiff on her cellular telephone using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

15. Plaintiff never provided her cellular telephone number to Defendants and never provided her consent to be contacted on his cellular telephone.

16. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

17. The calls from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. Each of the aforementioned calls made by Defendants constitutes a violation of the TCPA.

19. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendants:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: October 8, 2018

Respectfully submitted,

By /s/ Jody B. Burton

Jody B. Burton, Esq.
Bar No.: 71681
LEMBERG LAW, L.L.C.
43 Danbury Road, 3rd Floor
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorneys for Plaintiff